IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 829 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARSHADKUMAR BALDEVBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 829 of 2001

MR KJ PANCHAL for Petitioner No. 1

Mr. M.A. Patel, APP for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 08/11/2001

ORAL JUDGEMENT

`1. Admitted.

2. The appellant-original complainant, in this

appeal filed under Section 454 of the Code of Criminal Procedure, has prayed that possession of the muddamal gold ornaments as mentioned in Ground No.(22) at page 17 of the memo of the appeal, be returned to him during pendency of Criminal Appeal No.345 of 2001 filed by the original accused against the conviction recorded and the sentence imposed by the City Sessions Court, Ahmedabad, by order dated March 21, 2001, rendered in Sessions Case no.325 of 2000. Criminal Appeal No.345 of 2001 has been admitted by this Court.

3. Heard the learned advocate for the appellant and learned Additional Public Prosecutor, Mr. M.A. Patel, for the State.

4. It may be mentioned that the original accused had committed robbery from the business place of the appellant. They had stolen golden ornaments belonging to the appellant for which a regular trial, being Sessions Case No.325 of 2000, was held and the original accused persons, namely, accused Nos.1, 2 and 3 were convicted under Section 397 read with Section 120B of the Indian Penal Code and were sentenced to undergo imprisonment of seven years by the City Sessions Court, Ahmedabad, by its order dated March 21, 2001. At the conclusion of the trial, the appellant had filed Criminal Misc. Application No.1976 of 2001 for return of the muddamal gold ornaments to him. The learned Additional City Sessions Judge, Court No.7, Ahmedabad, has passed order dated September 26, 2001 to the effect that the appellant was the owner of the muddamal gold ornaments but, as the High Court has admitted the appeal, it would not be within his powers to return the muddamal gold ornaments. The said order has been challenged by the appellant by filing this appeal under Section 454 of the Code.

5. It is not disputed that the appellant is the owner of the gold ornaments which formed part of muddamal articles recovered from the accused persons. The accused persons had never claimed the ownership of those muddamal gold ornaments. None else but the appellant is found to be the owner of the muddamal gold ornaments which are lying in the custody of the City Sessions Court, Ahmedabad, as muddamal articles. If the muddamal gold ornaments are ordered to be retained in the custody of the Court pending hearing and final disposal of Criminal Appeal No.345 of 2001, then, the original owner, i.e. the appellant would be deprived of use of the said articles, because the appeal is not likely to be heard in the near future.

6. In my view, in the facts and circumstances of the case, it would be expedient and in the interest of justice to order for return of the muddamal gold ornaments to the appellant on his depositing Rs.10,000/(Rupees Ten Thousand only) and executing a bond in the sum of Rs.80,000/- and an undertaking to the effect that:

(i) in the event any other person claims or if the muddamal gold ornaments are ordered to be confiscated by the State at the conclusion of the appeal, the said muddamal gold ornaments would be returned and redeposited with the Sessions Court;

(ii) the appellant shall not change characteristic and form of the muddamal gold ornaments.

The undertaking, bond and deposit as stated above shall be filed in the City Sessions Court, Ahmedabad, within one month from today.

Order accordingly.

With the above direction, the appeal is allowed.
Direct service is permitted.

November 8,2001, (M.H. Kadri, J.)
(swamy)